

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 89-285-T - ORDER NO. 90-465 ✓

April 25, 1990

IN RE: Application of West Brothers Transfer)	
and Storage, Hauling and Storage Division,)	ORDER
Inc., 2020 Progress Court, P.O. Box)	GRANTING
6365, Raleigh, NC 27828, for a Class E)	CERTIFICATE
Certificate of Public Convenience and)	
Necessity)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application filed on May 26, 1989, by West Brothers Transfer and Storage, Hauling and Storage Division, Inc. (the Applicant) for a Class E Certificate of Public Convenience and Necessity to render motor freight service over irregular routes only as follows:

COMMODITIES IN GENERAL (EXCEPT COMMODITIES IN BULK, IN TANK TRUCKS; CLASS A AND B EXPLOSIVES; RADIOACTIVE MATERIALS; HOUSEHOLD GOODS; BANK COURIER COMMODITIES; AND COMMODITIES COMMONLY TRANSPORTED BY ARMORED VEHICLE): Between points and places in South Carolina.

Subsequent to the initiation of this proceeding, the Commission Staff instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and

time in which to file the appropriate pleadings. The Notice of Filing was duly published in the State Register.

Petitions to Intervene were timely filed by Southeastern Freight Lines (Southeastern), Greenwood Motor Lines, Inc. (Greenwood), and Spartan Express, Inc. (Spartan)--hereinafter collectively referred to as "the Intervenors".

Pursuant to notice duly given, a hearing was held at the Offices of the Commission on March 29, 1990, Caroline H. Maass presiding. The Applicant was represented by Arthur G. Fusco, Esquire; Intervenor Southeastern was represented by F. Lee Prickett, Jr., Esquire; and the Commission Staff was represented by H. Clay Carruth, Staff Counsel. Intervenors Greenwood and Spartan did not appear.

Testifying on behalf of the Applicant were: Tommy Howard West, resident of Raleigh, North Carolina, President of the Applicant; Laura Haynes, resident of Rock Hill, South Carolina, Sales Service Manager for Willamette Industries; John T. Sarb, resident of Dearborn, Michigan, Corporate Traffic Manager for Standard Products; and Joseph Dubov, employee of Sterne Knitting Mills of New York, New York.

Testifying on behalf of Intervenor Southeastern were: Herb Westbrook, Manager of Warehousing for Cooperative Electrical Energy Supply System of Lexington, South Carolina; Larry DeWalt, employee of Union Supply Company of West Columbia, South Carolina; and Russell L. Garrett, Traffic Manager for Southeastern Freight Lines of Columbia, South Carolina.

According to S.C. Code Ann., §58-23-330 (1989 Cum. Supp.), an applicant applying for a certificate to operate as a motor vehicle common carrier may be approved upon a showing that the applicant is fit, willing and able to appropriately perform the proposed service; provided, however, if an intervenor shows or if the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application.

If an application is denied, another application may not be made until at least six months have elapsed since the date of the denial.

FINDINGS OF FACT

Upon consideration of the information contained in and attached to the Application, and the testimony and exhibits of the witnesses, the Commission finds the following facts:

1. That the Applicant has been a family-owned business since its beginnings in 1946, and has expanded operations to include contract carrier service in North Carolina since 1959, and has entered into the less-than-truckload (LTL) business since 1980.

2. That the Applicant has recently grown from a business which took in approximately \$1 million in gross revenue in 1980 to one which projects a gross revenue realization of approximately \$9 million for 1990.

3. That the Applicant currently operates as a certificated intrastate motor carrier in North Carolina, and operates as a certificated interstate motor carrier in North Carolina, South Carolina, Georgia and Virginia.

4. That the Applicant has 190 employees.

5. That the Applicant has two (2) motor carrier operations divisions, viz., an LTL division with 36 power units and 57 trailers, and a contract division with 56 power units and 265 trailers.

6. That the Applicant also maintains some 420 storage trailers.

7. That the Applicant currently maintains eighteen (18) power units domiciled in Charlotte, North Carolina with which to serve the South Carolina market, and has ordered five (5) new power units to be dedicated to serving the South Carolina market as well.

8. That the Applicant is willing to acquire additional equipment and facilities as needed to serve the South Carolina intrastate market, and has the means to do so by financing through the United Carolina Bank.

9. That the Applicant maintains liability insurance coverage with a \$1 million limit of liability.

10. That the Applicant has an established comprehensive safety program, with a separate company division and vice president dedicated to conduct and maintenance of the program.

11. That the safety program involves initial training and regular monthly meetings.

12. That the Applicant employs drug screening of employees before hiring, and requires its drivers to be uniformed.

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13. That the Applicant plans to establish a terminal in Columbia, to begin with, and locate facilities in Charleston and Anderson over time.

14. That the Applicant has specialized in kidney dialysis transportation service, and has achieved recognition for excellent provision of this service.

15. That there is a need for this type of transportation, as well as other "sensitive to special needs" transportation services in South Carolina.

16. That the motor carrier service provided by the Applicant to its shippers meets certain needs which have not been satisfied by currently certificated South Carolina intrastate motor carriers.

CONCLUSIONS OF LAW

Section 58-23-330, supra, imposes upon an applicant the burden of demonstrating that it is fit, willing and able to appropriately perform the proposed motor carrier services. The Statute imposes upon any intervenor(s) the burden of demonstrating that the public convenience and necessity is already being served by those certificated motor carriers authorized to provide the motor carrier services for which the applicant seeks authority.

Based on the facts found hereinabove, as well as the evidence in the entire record herein, the Commission finds and concludes that the Applicant has demonstrated its fitness, willingness and ability to appropriately perform the proposed motor carrier services, while the Intervenor(s) have not demonstrated that the public convenience and necessity is already being served by them.

and/or other certificated motor carriers authorized to provide the proposed motor carrier services.

Therefore, the Commission reaches the following conclusions of law:

1. That the Applicant is fit, willing and able to appropriately perform the proposed motor carrier services.

2. That the public convenience and necessity is not already being served as to the motor carrier services proposed in the instant Application.

IT IS THEREFORE ORDERED:

1. That the Application of West Brothers Transfer and Storage, Hauling and Storage Division, Inc. for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved.

2. That the Applicant file the proper license fees and other information required by S.C. Code Ann., Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. That upon compliance with S.C. Code Ann., Section 58-23-10, et seq. (1976) as amended, and the applicable provisions of R.103-100 through R.103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as

amended, a certificate shall be issued to the Applicant authorizing the motor carrier services granted herein.

4. That prior to compliance with such requirements and receipt of a certificate, the motor carrier services authorized herein may not be provided.

5. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:


Executive Director

(SEAL)